

MAR - 9 2018

**MINUTES
FOR THE MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JANUARY 26, 2018
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig
Samuel Gon

Chris Yuen
Keone Downing
James Gomes

STAFF

Russell Tsuji/LAND
Dave Smith/DOFAW
Michael Cain/OCCL

Kevin Moore /LAND
Steve Bergfeld/DOFAW
Allan Downing/SHPD

OTHERS

Alan Tokunaga/K1
Dr. Van Anthony/K1
Cindy Freitas/K1
Candace Fujikane/K1
Chu-Kai Huang/C2
Stephanie Nagata/K1
Bill Wynhoff/AG

Doug Simons/K1
Rob Pacheco/K1
William Freitas/K1
Cheryl Burghardt/K1
Feng Yi Guo/C1
Greg Chun/K1

Chair Case called the meeting to order at 9:30 am. The Chair read the standard contested case hearing statement

Item K-1 is a Non-Action Item so there are no contested case procedures.

NON-ACTION ITEM:

1. Board Briefing on Maunakea Management, including:
 - 1) The 2017 Annual Report on the Status of the Implementation of the Maunakea Comprehensive Management Plan (CMP);
 - 2) Update on decommissioning plans for Maunakea observatories;
 - 3) Update on the status of proposed revisions to the Maunakea CMP;
 - 4) Update on the status of proposed Administrative Rules for Maunakea;
 - 5) Update on the status of the EIS for new land authorizations on Maunakea;
 - 6) A Review of the July 2017 report from the State Office of the Auditor; Ka'ohē, Hāmākua District, Hawaii, TMKs (3) 4-4-015:009 and (3) 4-4-015:012

Sam Lemmo, Administrator, presented the briefing for the Office of Conservation and Coastal Lands (OCCL). OCCL is responsible for regulating land uses on Mauna Kea. OCCL is the permitting agency for Mauna Kea and is also responsible for the overall Comprehensive Management Plan.

There is a condition in the Comprehensive Management Plan that UH provide an annual report to the Board. It is also important that the Board hold the University of Hawaii responsible for the 103 management actions in the management plan.

Noted that the Office of Mauna Kea Management, UHFA, other UH Staff are also present. Also, a number of DLNR Administrators and Managers are also present.

There is an on-line library of Mauna Kea documents that can be accessed on OCCL's website. Described the different management units of Mauna Kea and briefly, the different management responsibilities of the different Divisions of DLNR. Also described, briefly, the different responsibilities of UH Divisions, Offices, Committees, and programs.

Key Issues

Commercial Tours. OCCL used to manage commercial tours. Responsibility then went to the Land Division. In 2000 Commercial Tour permits became the responsibility of UH.

Enforcement. DOCARE is spread thin and unable to respond to a call quickly. Also, what authority does DOCARE have to enforce in a leased area. We are fortunate to have (9) rangers who can assist people even if they do not have enforcement authority. That will be discussed today about the enforcement rules

De-commissioning of the Telescopes. Process that outlines decommissioning and the different ways to decommission a telescope and included in the decommissioning plan. There are currently (3) telescopes that are in the process of being decommissioned.

The 1998 audit was critical of the Mauna Kea Management area at that time. The audit laid the ground work for everything we see on the mountain today. There have been numerous audits since then and Stephine Nagata is here to go over those.

In terms of future Board Actions include and limited to:

- Pending Conservation District Use Area application for Maunakea Visitor Information Station system improvements.
- State to negotiate a new lease with UH for the Science Reserve.
- UH needs to revise Comprehensive Management Plan. Done every 5 years.
- Ways to create better collaboration with UH and all of the different agencies with jurisdiction.
- Board will hold question until later

Lemmo said, in general, he has seen positive things come out over the last decade. There are still issues that need to be worked on. That is why we are here, we want to be transparent about this and trying to hold people accountable for taking care of this significantly important natural and cultural resource that we all care about.

Stephanie Nagata, Director of Office of Maunakea Management, and Greg Chun from OMKM presented for UH. She gave a brief history regarding the approval of the Maunakea Management Comprehensive Plan (CMP) by the Board in 2009.

Provided a PowerPoint which you can access at: <http://dlnr.hawaii.gov/occl/maunakea-management/>

There are (5) categories of implementation activities.

Resources:

- Identify resources and a baseline for those resources.
- Wekiu Bug
- Range larger and wider than originally considered. Funded a study on habitat and genetics.
- Food distribution—wind and terrain study
- Characterization of habitat
- Archival study of historical documents related to Mauna Kea
- Oral History of individuals with ties to Mauna Kea
- Archaeological Inventory survey (5 years to complete, short study season)
- Over 260 historic properties in summit regions and along road corridor.
- DLNR commissioned same Archaeologist to study NAR.

Botanical Survey

- Permafrost study, permafrost field is shrinking because of global warming.
- Arthropod biodiversity study.
- Invasive Species study—Evaluation of existing preventative measures
- Climate change modeling program.
- Weather monitoring network.
- Spatial Mapping
- High resolution digital mapping of surface terrain to detect changes over time.
- Wekiu bug and alpine arthropod diet study
- Seabird and Bat survey.

All are multi-year studies.

Monitoring

- Historic properties—annual monitoring on either 1, 3 or 5 year rotations. Archeological and burial treatment plan
- Invasive species. Monitor annually for alien species since 2000. Currently done in-house.
- Lake Waiau and Adze Quarry (NAR)
- Since 2012 monthly photo documentation has been submitted to NAR in Hilo.
- Funded high resolution mapping of lake bed bottom profile

Kahu Ku Mauna requested Rangers to help monitor activities at the lake as well as Adze quarry. This led to the 2008 MOU with BLNR. However, before it went to DLNR there was a contested case, and so it could not move forward. Signatories have changed. We would like to finalize.

Member Gomes asked, what kind of bugs does the Wekiu bugs eat? What is the population?

Fritz Klasner Natural Resource Program Manager, said population is hard to establish because it fluctuates. Wekiu predominately eat flies that are blown up from lower elevations. The main thing is that they are bugs that cannot survive the cold dry climate of summit. Gomes asked if Wekiu have predators? Klasner said, not sure, but concerned about predatory ants. He is also working with fire ant lab in Hilo.

Klasner said regarding the ants, the landscape is too cold and too dry. He does not believe that they can establish on Mauna Kea. Wekiu only exists on the summit of Mauna Kea. The 'a' bug on Maui might be related. Gomes asked if birds would eat the bugs? Klasner replied not likely. He went on to describe the trapping and monitoring process. Lifespan is about 1-year. They go back to the same trapping locations every year, and so we can tell that the population is variable, which is normal for this type of bug.

Individual traps might go from 1-2 to 300 bugs, in the course of 2-3 days. While some cinder cones are better than others, they have not established a definite preferred location. There are other types of native species like the wolf spider, moths, etc.

Gomes asked how deep is Lake Waiau and how is it fed? Klasner replied it is approximately 4-6 meters. Seepage from snowmelt helps feed the lake. There is also a spring because you can see bubbling in the water.

Gomes asked if a list of species on Mauna Kea is available? Nagata replied, yes.

Roehrig asked what was the purpose of upright rocks in the NAR? Pat McCoy, foremost Archaeologist for Mauna Kea has said these are shrines but not sure of purpose of these shrines. Gomes asked how are the sites are protected? Nagata said more remote sites are untouched. However, the sites closer to road are sometimes moved around. So, if the rocks have fallen, they might put them back. We will work with SHPD and Kahu Ku Mauna to figure out what to do.

SHPD suggested putting up a sign. However, Kahu Ku Mauna does not like signs because it draws attention to the site.

Roehrig asked if they are mostly in the Adze quarry area? Diagram of the sites shows that the Adze quarry has the most sites.

Gon asked about modeling of Wekiu bug habitat? Why two pictures? Left resolution is a 1 meter terrain model and on the right, is a 10 meter resolution. General pattern is the same, but the larger landscape measure is sufficient to direct you where to go, while the smaller resolution answers questions about the individual cinder cones. Gon challenged the interpretation of the comparison pictures.

RESOURCE MANAGEMENT PROGRAMS

- 2014 SHPD approved an archaeological monitoring plan and burial treatment plan.
- Cultural Activities policies are being drafted.
- Invasive species control management plan.
- Construction vehicles are inspected before entering management area
- Permit compliance
- Summit Facilities and Hale Pohaku are inspected two times a year to ensure they meet the CNPs

CMP Compliance

OMKM has had a Ranger program since 2001. They have witnessed an Army helicopter landing in NAR. Individuals removing rocks from NAR. These were reported directly to DLNR. Gomes asked about removal of fireweed. Nagata said it is put in trash bags and taken to the dump. Human activity is tracked by Ranger Daily Reports and automated vehicle counter.

Case asked if they count the time of day. The Rangers check the time of day. Automated counters are not programmed to do time of day.

Gomes asked if it would be practical and feasible to give Rangers more enforcement authority? Nagata replied, it is possible, but it would take legislative authority. It would help the Rangers.

GIS and Database

There is some leftover downed military debris that PTA will be assisting in removing. Gomes asked how long debris has been there? Nagata said, since before 2000. It was not discovered until the archaeological survey was done. Noted that management authority at the time cleaned up the crash site per requirements.

Public Safety

We are currently working on the ingress/egress and parking project. We would like to add a guardrail and parking for the stargazing program.

Education, Training, and Welfare:

Outreach Program

Starting in 2012, we have provided an orientation training for all workers and construction crews that is updated every 3-years. We have volunteers who help to pull weeds. We mentor student and provide outreach to the school as well as participate in community events whenever possible. We have a Mauna Kea Speaker series, where individual Scientists speak once a month on their research on Mauna Kea.

Gomes asked what was the highest elevation at which fireweed appears? Nagata replied, it goes all the way to the top.

Printed Materials

- How to visit Mauna Kea safely.
- Resource brochure—also a poster
- Signs

Information is distributed at the Visitor Information Station, we hold public forums. Provide information on Imiloa. They were recognized for their work in 2016 & 2017.

OMKM and DLNR Collaboration

- Tour operators are problematic
- Working with DOCARE to manage the situation
- Working with DLNR on signage.
- Research on both DLNR and UH managed lands.

Gon asked if they have any insights on the impermeable layer is made of?

Chun noted scientists have mapped impermeable layers at Lake Waiau and Hale Pohaku. They believe that there was an eruption event that modified it and the ash layer to make it impermeable. Noted that there were reports of consistent standing groundwater in the past, but where did it go now? Hale Pohaku and Waiau are approximately 1-mile apart.

Gomes asked about the quality of water. Chun said, there is a diatom that is endemic to the lake. Color changes throughout the year, which is expected. Historic reports talk about the lake water not tasting that great. They do not sample the lake water for scientific purposes.

Implementation is characterized as on-going (75), in-progress (18) and completed (9).

Administrative Rules

The draft has been prepared. We are seeking additional consultation with additional agencies including OHA. Gomes asked if opponents were given opportunities to review the draft rules. Nagata said they were given an opportunity to comment and chose not to.

Decommissioning

CSO

NOI to decommission. It will take 3-4 years for an EA, permitting and restoration of site.

Hokukea, the small telescope is in the process of being decommissioned.

Tommy Oi asked how they track who went through orientation if they do it on-line? Nagata said they have to take a quiz with name and e-mail. They are issued a certificate if they pass the quiz.

Case asked about the schedule for the next update of the comprehensive management plan. Nagata said the next part is a status of the resources report. Annual reports to the Land Board are cumulative. Noted that at the last five-year mark, they felt they did not have enough information to warrant an update, and so no update was done. After review, they will look at what needs to be updated to the Comprehensive Management Plan (CMP) based on information from all of the reports.

Yuen asked about management during snow days. Nagata said that they try to manage the number of cars allowed up during snow days. They have established a one-way pattern to assure the movement of vehicles at the summit. For the most part, it is manageable unless the snow goes to lower elevations.

Gomes asked how many visitors per day on average? Nagata replied, roughly 300-500 mostly for star-gazing in the evening.

Case asked do you have a sense of the carrying capacity? How does UH envision what would be a manageable number of visitors on the mountain versus overwhelming the resource. Nagata said that we are in discussion with the TIM School of management to do a study on carrying capacity.

Public Testimony

Alan Tokunaga, Astronomer. Former Director of NASA Infrared telescope facility. He supports OMKM and its management of the resource. They are protecting our natural and cultural resources under their charge.

Cindy Freitas. Keep in mind that the State holds lands in trust for the people of Hawaii. Does not believe that UH is in compliance with the CMP because they did not update the 5-year review or meet benchmarks in the plan. DLNR is responsible for the management and protection of Mauna Kea, and has improperly delegated this responsibility to OMKM, which has resulted in significant adverse impacts the Mauna Kea. This has been brought to the attention of the Board for several decades as noted in the series of audit on the management of Mauna Kea.

Case asked which audit she was referring to? Freitas replied, 2005-13 page 30.

Doug Simons. Supports OMKM. He received PhD from UH Astronomy and was Director of the Gemini Telescope and served on OMKM representing the Observatories. He is especially supportive of the Ranger program. The Ranger program is necessary for any management going forward. They should give them actual authority to enforce rules, especially preventing 2-wheel drives from going on the access road. Believes in community management of important cultural resources such as Mauna Kea.

Gomes asked about 1,000 trips up to Mauna Kea? Do you stay up there, or go up and down daily? Simons replied, yes, he commutes.

William Freitas. Mauna Kea is in jeopardy. Mauna Kea is being over-run. How do you protect the practices of the Kupuna? How to protect Mauna Kea? Telescopes desecrate the area. No future development. Questioned OMKM consultation with Native Hawaiians. Asked Board to Malama Mauna Kea.

Jim Anthony. Lives in Kahana. Issue of intergenerational equity. Report is comprehensive and thorough. Interagency cooperation was noted. Questions:

- Cost of study
- What action items will this report generate?
- Are there timelines?
- How much more will (the reports?) cost?
- Will the study(ies) be peer reviewed?

Gomes asked who should do the peer review?

Anthony replied, well known people with impeccable standards. He does not have names immediately available. He noted that there are many credentialed Hawaiians. Felt that they should be Hawaiians, but not necessarily only Hawaiians. However, since this is a Hawaiian issue, Hawaiians should review. Hawaiians understand the metaphors because they live the culture. People from outside understand the model of the culture.

Gomes asked if Anthony could help the Board to frame the study? Anthony said he would consider it and is flattered, but he is getting along in age.

Gomes asked who should pay for the peer review? Anthony did not answer the question.

- Change the communication pattern between the Board and the public. We can start by changing the setup of the room. Set it up in a circle.
- Have more briefings to shine light on a variety of issues for both the Board and the public. "Let us reason together" (JFK).

Candace Fujikane. Board member of Kahea, Environmental Alliance. Professor at UH. Looking specifically at OCCL's Environmental Assessment of new land uses. Supports letting the leases and easements expire at the end of 2033. Would like to restate that in the 1998 audit there were serious management issues in regard to UH's bias toward astronomy over the protection of natural and cultural resources. Would not like the alternative to let the leases lapse to be taken lightly. The importance of Mauna Kea in the hydrological cycle. TMT impact on Mauna Kea is not negligible. Urged letting leases and easements expire.

Case noted that the 1998 audit was addressed and most items were addressed. Is there something outstanding? Fujikane said, yes, the issue of the State supporting astronomy over natural and cultural resources. This is still outstanding and reiterated in the 2017 audit.

Yuen asked, apart from your disagreement with having the observatories there in the first place, do you have any disagreement with OMKM's management now? Fujikane replied, yes, noted that 5% of research money is being skimmed to fund TMT over opposition of most of the faculty. Does not understand why the University of Hawaii is the applicant for the TMT project. Why are we paying State money to fund TMT?

Yuen asked when she began to oppose telescopes on Mauna Kea. Fujikane said she started her research in 2009. She has seen diversion of water from the sacred springs, taking these waters for Pohakuloa. Yuen noted that vocal public opposition did not start until about 1997. Noted that the Keck II, Gemini, Subaru and (one more), there were no comments. Why did opposition start in 1997 after nothing earlier? Fujikane also did research and said that she found opposition from public users of Mauna Kea from the 1970's. Also noted that it was much more difficult for the public to speak against the telescopes. For example, only EA were required to meet environmental review. Things are more public now.

Rob Pacheco. Testified in support. Lives in Holualoa. He owns a company that is one of the (8) permitted tours on the mountain. He was the first Chair of Mauna Kea Management Board when it began. He gave some history of the Office of Mauna Kea Management. It started in 2000. He said that the Office has made significant strides in managing Mauna Kea. Including moving tour permits to OMKM. Noted the fees go back to the management of Mauna Kea. Noted that there are less permitted operators than formerly. Noted also that most of the access is right around sunset and OMKM has done excellent job of monitoring traffic in that area.

Pacheco went on to say that OMKM has coordinated with other agencies to do the studies mentioned in Nagata's summary. Likes the OMKM training. Rangers are the most impactful improvement. Believes they need enforcement authority. Board should look at illegal tour operators.

Yuen asked how filming and media are controlled. Pacheco noted that if they ask officially or need a film permit then they are denied. Individual travelers are allowed. He would like to see a limit on 2-wheel drive vehicles. Exclude Mauna Kea summit from the Hawaii Island PUC license similar to Waipio exclusion. Mauna Kea Authority is worth discussing. Believes OMKM can do the job, move them into DLNR similar to the Office of Conservation and Coastal Land.

Downing asked about the percentage that goes to OMKM. Pacheco said, \$6 per head. Annually not so sure.

Cheryl Burkhardt. Sent in an e-mail. Reading Kalani Flores testimony (also by e-mail). There is improper delegation of duties to UH. No regular and comprehensive analysis of effectiveness.

- OCCL staff to conduct a more comprehensive analysis of CMP compliance
- UH to provide timeline for completion

Asks Board to thoroughly review his testimony.

James Manaku. Concerned that allowing people who pay for access to the mountain, but Hawaiians would not be allowed. When will building on Mauna Kea stop? It is the responsibility of the Board to protect the rights and resources of Hawaiians for the future.

Kalama O ka Aina Niheu, M.D., Ahahui o nā Kauka. In 2004, Ahahui o na Kauka took a trip to Mauna Kea. Support the protection of Mauna Kea. Wahi Pana are essential to the health of the Hawaiian people.

Laulani Teale. Coordinator of the Ho'opai Pono peace project. Affiliate of the 7th generation fund for indigenous people. Sacredness of Mauna Kea touches the sacredness in humanity and thus all people are touched by the mountain, as stated by Mr. Pacheco. The conflict over Mauna Kea reflects the conflict in humanity. Noted that because of the sacredness of the mountain, people who feel the sacredness are compelled to fight to maintain the sacredness of the mountain. Noted a line of healers, both medical doctors and traditional healers who noted that the health of the mountain is related to the health of the Hawaiian people.

Gomes asked if the plants that she was talking about are around the telescopes. Teale said that the medicines are in many forms, not just plants. She also noted that even the plants down below can become contaminated if Mauna Kea is contaminated.

Gomes asked what should happen for the protection of Mauna Kea? Teale responded that there needs to be healing and restoration of the pono of the medicinal property of the mountain itself. Those medicinal properties go into all things that are part of that mountain. When there is conflict, such as that over TMT, that conflict is part of the contamination.

Gomes asked how would you resolve what has been done prior? Teale said you have to be very careful about even taking down telescopes, because of the digging. Whether or not that should be done is not a question she is addressing. However, construction of TMT would harm the physical property of la'au.

Greg Chun, provided closing comments from UH. President of Office of Mauna Kea Management Board. Support OMKM management of Mauna Kea. OMKM Board is an advisory Board. Reiterated the good and important work of the Rangers. They constantly ask what they can do better. The concern of the Board is not just astronomy, but care and management of the entire mountain, not just the summit. Argued for the independence of the Board from UH.

Gomes asked how the Board would address issues or complaints about things that either were not implemented or implemented correctly. Chun said that comes up in their meetings all the time.

Roehrig admonished Mr. Chun to find a trail between the practitioners and the astronomers. Chun addressed that by noting OMKM understand the important need for communication and that they have worked hard on better communication. However, once the TMT case went to a contested case and further lawsuits were filed, communications shut down, for legal reasons.

Noted that communications improved once they could talk directly to Suzanne's office. Review of administrative rules will go before the Board of Regents in February or March. We are working actively with Mayor Kim and Senator Kahele, both of whom have alternative management plans for Mauna Kea. Working with OHA and DLNR. Plan to do the same when the EIS notice comes out. Trying to find ways to talk to the Protectors (Kahu Ku Mauna).

Roehrig noted that informal consultation is important and commended UH for moving forward with consultation. Supports ho'oponopono models as a way of getting through difficult communications.

1:05 pm Lunch

2:00 pm Reconvene (Member Roehrig did not return to the meeting)

ITEM C-1 Request for Issuance of an Administrative Fine of \$2,500 pursuant to Chapter 183, Hawaii Revised Statutes, to Feng Yi Guo for violations of

Section 13-104-24, Hawaii Administrative Rules, at Mauna Kea Forest Reserve, Hāmākua, Hawai‘i, Tax Map Key No: (3) 4-04-015:001.

David Smith presented for DOFAW. DOCARE and OMKM documented Feng Yi Guo conducting illegal tours on Mauna Kea. Documented (19) occasions of conducting illegal commercial activities in a 90-day period. Was given a warning by OMKM rangers. One day later was again seen conducting illegal commercial activities.

Board Discussion

Yuen wanted to know if the violator was in the room and if they were going to ask for a contested case. Guo said not at this time.

Smith noted that they see this as pattern of abuse. Further, in general, commercial activities are not usually allowed in the forest reserve because general use is already so big.

Steve Burkfeld, Hawaii Island Branch Manager. Tours have been taking place in the forest reserve around Hale Pe’a Moa and Hale Pohaku.

Gomes asked why they were not fined sooner. Burkfeld said, that DOCARE was trying to build its case. Smith pointed out that earlier today, Pacheco had testified that he paid almost \$500,000 a year, and this person is not paying anything. She should have to be fined the full amount.

Public Testimony

Feng Yi (Grace) Guo provided her statement. Owner of company since 2004. Does commercial activities and provides shuttle service all over the island. Believes that she is not doing illegal tours on the mountain. We are legitimate tour company and PUC licensed. Has over 3 million in insurance to cover all of her vehicles. Has been unable to register her company to get a permit. Has also been trying to contact DLNR, although no response. Noted that they drive their tours on a County road. She went to the County to get a surveyed road map. So, arguing that she is not in a forest reserve.

Gomes asked if she has an e-mail trail of her attempts to get in touch with DLNR. She stated that her vehicle is parked in a County or UH lot. Not on DLNR property. How does DLNR know they are doing tours if their driver stays in the car. It is just like a taxi.

Gomes asked if her company has done anything to jeopardize the environment, safety, or cultural resources on the Mountain. Guo noted that there are no Chinese tour companies. Only three English tours, and four Japanese Tours. Chinese customers will hire non-tour companies or rental cars if they do not have access to a Chinese speaking tour. No solid rules saying that they cannot go up to Mauna Kea. She says we cannot stop all of the tours and all of the people who want to go there. Why are some companies legit and others are not?

Yuen said she is being charged for going up to the cinder cone. She denied that she went up the cinder cone. She says she only stayed on the road. It is unfair to the Chinese tour community. Supports the Ranger program. Believes without them, there would be chaos.

Case explained that she has an unpermitted commercial tour. Just because others do not always get cited, does not mean that she can do it. Guo then argued that she runs a shuttle, not a tour. They shuttle people to a place, drop them off, and then shuttle them back.

Dave Smith noted that in the Exhibit there is a Cease and Desist dated Dec 5, 2017. The following day, there is a report from the DOCARE officer describing the tour going into the Forrest Reserve up on Puu Kalepeamoa off of FB-10 Road.

Jay Hatayama, Forestry Manager, talked to Officer Shishido. The van was parked on UH property, and the tour people got out and climbed up Kalepamoa. DOCARE interprets the law such that if the tour operator takes the tour and parks and the people go on that road, then they are still in violation.

Gomes asked if they were on the County road or were they on Forestry land. Hatayama said that the group was on Forestry land, on foot. Yuen asked Guo if the people walked into the Forestry land, or does she also dispute that. Guo disputed the allegation. She also said that she told them to go to the bathroom in the visitor center. Yuen asked why would they walk down the gravel road to the cinder cone. Guo said because there is a line of people so her people follow. No signs saying, "do not climb the hill."

Case asked how long her vehicles stay at the visitor center. One and a half hours. Case asked if she was at the visitor center around sunset? Guo said she thinks it was after sunset. Yuen asked why she was going up at that time of day? Because that is the time the people want to go.

Oi asked Chief Farrell if they were not in the van, but walking are they in violation? Farrell answered that they are part of a commercial tour operating in that vicinity. If it is between that time and sunset, then that is the only reason for them to be there. They paid money to get taken there, so there is a nexus to the tour operation. Not normal practice to interrupt the tour to ID the customers.

Case noted that there are statements from the DOCARE officer and from the Ranger that the group came out of the van. Case also noted that the December 6, 2017, report notes that the van was there at 5:45 pm and sunset was at 6:04 pm, so they were there for the sunset.

Yuen made a motion to go into executive session to discuss legal matters. Gon seconded.

3:10 pm Executive Session

3: 25 pm Reconvene

Yuen made a motion to approve the staff's recommendation for a fine of \$2,500. Downing second. Downing stated that OMKM should look at these tour permits going out for bid or on time limits. If we are not finding ways to allow people to experience Hawaii for the first time. He notes that she sees a business opportunity that she is not being allowed to do.

Oi said DOFAW had adequate information but they need more diagrams of photos. Smith said he agreed and they should probably bring in DOFAW the next time.

Yuen noted that they had to really question a lot in order to get to the gist of the violation. It would have been easier if the report noted 1) when sunset tours happen, and why people go up there at certain times, where the roads and viewing areas are. Yuen said that they probably have more carrying capacity of the sunset tours. Perhaps that should also be looked at. Gomes agreed with Downing and Oi that the submittal needed to be clearer.

Motion

Approved as submitted (Yuen, Gon). Unanimous.

Further Discussion

Case advised Guo that she could ask for a contested case. Noted that she had to ask for a contested case in the meeting and follow up in writing in ten days. Gomes asked if she understood what a contested case is. She said "no" but she would talk to her lawyer.

Guo made the statement that the Board made a decision to fine her without evidence. However, she does not want a contested case because it will cost her more money and time. She believes that her rights were not upheld.

(Member Gon left the meeting)

ITEM C-2 Request for issuance of an administrative fine of \$2,500 pursuant to Chapter 183, Hawaii Revised Statutes, to Green Travel & Tour, Inc. for violations of section 13-104-24, Hawaii Administrative Rules, at Mauna Kea Forest Reserve, Hāmākua, Hawai'i, Tax Map Key no: (3) 4-04-015:001.

Dave Smith presented for DOFAW. Multiple occasions of violations. Similar to item 1. Yuen wanted to know if the alleged violator was in the room and if they were going to ask for a contested case.

Dien Jung Lin and Susan Teita from Green Travel was in the room. Did not want to request at contested case at this time. Smith noted three instances in which Green Travel and Tour was conducting an illegal sunset tour. The company does not have a permit.

This violation actually has a picture of the vehicle in the forest reserve.

Board Discussion

Case noted that in this case the operator rented the vehicle under Green Tours.

Yuen asked if Mr. Hong was disputing that his van was in the forest reserve? He said that this is his vehicle, but it was being used for private purposes. His driver took relatives on the tour in this car on this day.

Chun Kai Hong, manager for Green Travel Tours. Has contacted OMKM to get a permit several times and were told they have to wait because there are no rules regarding additional permits. Tour company mainly services Chinese tourists. How is it okay that in 15-years there is no path forward for operators that do not already have a tour permit. Tours reduce the impact of cars.

Yuen asked if the vans normally go down this road? Mr. Hong said the route does not normally go to the Hale Pohaku Sunset tour.

Yuen noted that the report stated there were six passengers in the car (Hong said the driver took two relatives).

Susan Teita said that, 1) the license number is inaccurate. Yuen asked who she was representing. She is the Administrative Assistant to the Administrator of the company who is Dien Jung Lin.

Teita said that the picture being referenced is when the driver borrowed the vehicle and took his visiting family to visit Mauna Kea. The family stayed for one week. She said she had asked "Mike" if he had been approached by an officer? Mike took two elderly aunts who had difficulty with the altitude on these alternate roads. Normally Green Tours does not go on this road.

Downing asked if they rent the vehicles and then stick a magnetic sign with their logo on the side of the car? The Expedition has the PUC license on permanently.

Yuen noted that OMKM continued to document Green Travel and Tour take illegal tours on four separate incidences in December. Teita disputed the allegations. Yuen asked what the normal business is that they do on Mauna Kea. The take tours to the summit of Mauna Kea. Yuen noted that they are not supposed to be doing that.

Case stated that prior to giving the first Cease and Desist notice, DOCARE documented (16) separate occasions of illegal tours in the forest reserve. After the Cease and Desist, the company was noted conducting tours on two separate occasions. One of those occasions was a private tour, which still leaves (1) violation. Teita disputed the allegation. She stated that the van was not on a restricted road.

Teita read her statement. Green Travel and Tours has been in business for 25 years with an impeccable record. Dispute all the allegations. December 8, 2017, was a personal tour. Dec 18, 2017, report has the wrong license number, so no positive identification can be made. No one called Green Tours. Third report from Ranger Paiva is that Green Tours was observed multiple times in the forest reserve. Reports are disorganized and vague. Report is not written by the observer.

Teita said they tried to ask various people at DLNR, Governor's Office, and OMKM about who has jurisdiction over the Mauna Kea Road. Since jurisdiction varies over several sections, Teita is frustrated because there is no one answer.

Downing took umbrage at her statement that the Board is discriminating against Chinese. Case noted that they cannot get a permit because the number of permits is capped because we need to limit the number of people on the mountain for management permits. Case reiterated that this is not discrimination, because the cap does not take race of tourists into account.

Yuen is not sure that he believes that the Expedition was being used for personal uses, especially as that vehicle has been documented several times in the forest reserve. Teita said there is nothing to substantiate the allegation. Yuen noted that if one takes the statement of the Ranger at face value then there is something to substantiate the violation.

Yuen also noted that they admitted to running tours to the summit without a permit which is a violation, so they cannot say that the company does not violate rules. Teita said she has never seen a rule stating that you need a permit to go to the summit.

Case noted that they are disputing that they are conducting commercial tours on December 18, 2017 at Hale Pohaku and Kalepeamo. On Dec. 8, 2017, the report says that the tour is going into the forest reserve at Hale Pohaku. DOFAW confirmed.

Rob Pacheco said that if had a Cease and Desist warning from the State, he would not continue to go into the forest reserve even if he disagreed with it. He also noted that they had put in a proposal to recycle the permits, but that did not go anywhere. He also noted that there are places that he does not go, even though he would like to because those areas are limited and there is no commercial activity in those areas. While he disagrees with the policy, he still abides by the rules.

Smith noted that they are trying to get in front of a situation that has blown up. We need to get in front of it. He agrees with Pacheco, and in some places commercial might be better. But you still need a permit. In this case, there is an operator warned repeatedly, given Cease, and Desist notices, and still the operator returned to the area. Smith noted that they gave Cease and Desist notices to others who then stopped coming to the area. He also noted that someone like Pacheco pays about \$50,000 dollars a year, and these people are getting off lightly. They are only paying \$2,500 in fines. Smith does not want people to see this as the cost of doing business. Smith noted that people need to abide by the law.

Hatayama noted that DOCARE issued eleven citations for the same thing and they were sent to criminal court.

Dien Jung Li expressed frustration at inability to get a permit. Open permits to bid, or let everyone get a permit.

Case asked how many companies would bid on a permit? She said she was not sure. At least the two in the room would bid.

Case noted that the tension is that a lot of people do not want a lot of people on the Mountain. Li and Guo suggested that the price be raised.

Teita wanted to clarify that Pacheco was a former Board member.

Yuen stated that there is enough in the staff submittal to warrant the violation. He means no criticism of the individuals. There is still a violation.

Motion

Approve as submitted (Yuen, Oi). Unanimous.

Chair Case asked if either to them wanted a contested case. There are 2 steps. (1) you have to ask for it immediately and (2) you have to follow up in writing.

No one asked for a contested case.

Motion to adjourn (Gomes, Oi). Unanimous.

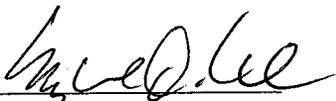
There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:45 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources